

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, III, Master in Equity

Case No. 2007-CP-46-4305

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APR 14 2014

SC Court of Appeals

SunTrust Mortgage, Inc., Respondent,

v.

Mark Ostendorff, Appellant.

RETURN TO MOTION TO STAY DATED MARCH 31, 2014

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In his Motion to Stay Execution, Appellant Mark Ostendorff states that this Court should wait to see if his Chapter 7 discharge is appealed and should require a bond under S.C. Code Ann. § 18-9-130. For the following reasons, this Court should deny the motion to stay.

First, SunTrust Mortgage, Inc. has no right to appeal the bankruptcy discharge because it did not file an objection to discharge or dischargability complaint prior to Mr. Ostendorff obtaining his discharge. In a chapter 7 case, a complaint, or a motion under §727(a)(8) or (a)(9) of the Bankruptcy Code, objecting to the debtor's discharge shall be filed no later than 60 days after the first date set for the meeting of creditors under §341(a) of the Bankruptcy Code. A quick review of the bankruptcy court's online records in PACER show that this was not done.

Second, the filing of a notice of appeal does not stay a foreclosure sale unless a bond is posted by the foreclosure defendant, Mr. Ostendorff. The provisions of S.C. Code Ann. § 18-9-130, which require a plaintiff to post a bond prior to selling property to satisfy a judgment under appeal, do not apply to mortgage foreclosures, and the plaintiff in a mortgage foreclosure action is not required to post a bond to proceed with the foreclosure sale after a notice of appeal has been filed. Carsten v. Wilson, 241 S.C. 516, 129 S.E.2d 431 (1963). Under S.C. Code Ann. § 18-9-170, an appeal from a judgment directing the sale of real property under a foreclosure decree does not stay the sale, unless an appeal bond is posted by the foreclosure defendant. S.C. Code Ann. § 18-9-170; Rule 225(b)(4), SCARA. A foreclosure defendant may not avoid the bond requirement in that statute by otherwise petitioning the appellate court for a stay. Ex Parte Andrews, 152 S.C. 325, 150 S.E. 313 (1929). Absent the posting of an appeal bond, it is the duty of the Master-in-Equity to proceed with the sale. Id.

CONCLUSION

Consequently, for the reasons above, this Court should not stay the execution of the order of the Master-In-Equity.

April 10, 2014.

Respectfully Submitted,

TATUM LAW FIRM, PLLC



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CERTIFICATE OF SERVICE

I, Brian Steed Tatum, attorney at the Tatum Law Firm, PLLC, do hereby certify that I have served a copy of the **RETURN TO PETITION FOR REHEARING**, by causing a copy of the same to be deposited in the United States mail, with postage prepaid and addressed as follows:

Mark Ostendorff
135 Cedar Creek Circle
Central, SC 29630



Brian Steed Tatum

Charlotte, North Carolina
April 10, 2014



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Thursday, April 10, 2014

Clerk, South Carolina Supreme Court
1231 Gervais Street
Columbia, South Carolina 29201

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APR 14 2014

RE: SunTrust Mortgage, Inc. vs. Mark Ostendorff
Case Tracking No.: 2013-000144

SC Court of Appeals

Dear Clerk:

Enclosed you will find an original and seven (7) copies of our return to the motion to stay execution. Please file the original and return the extra file-stamped copy to our office in the enclosed self-addressed, stamped envelope. Your prompt attention to this matter would be greatly appreciated. In the meantime, if you have any questions or comments, or if we may assist you further, please do not hesitate to contact us at any time.

Sincerely yours,

Brian S. Tatum

:bst
Enclosures

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